sovereign, and his sinister interest in the criminating effect of testimony ceases when he does not punish for the act on which the testimony bears. Also there are grave practical objections to the existence of a privilege interfering with the rendition of justice, whose scope is determined by heterogeneous foreign laws. See 4 WIGMORE, EVIDENCE, § 2258. Now as the criminal laws of the federal and state governments are entirely independent, this reasoning would restrict the federal privilege from extending to state, just as to foreign laws. Furthermore, the history of the Fifth Amendment shows clearly that its purpose is to protect the individual against the federal government only. See *Barron* v. *Baltimore*, 7 Peters (U. S.) 243. This purpose is fully effectuated when immunity from federal prosecution is granted. *Hale* v. *Henkel*, *supra*, 68. See 10 HARV. L. REV. 120, 121. Obviously, though, when federal courts are applying state law, crimination under state law should be the criterion of the privilege. *United States* v. *Saline Bank*, 1 Peters (U. S.) 100.

CORPORATIONS — INSOLVENCY OF CORPORATION — RIGHT OF TRUSTEE IN BANKRUPTCY TO RECOVER UNPAID BALANCE OF STOCK ISSUED AT A DISCOUNT. — A Minnesota corporation issued stock at ten per cent of its par value as fully paid up and non-assessable. Upon bankruptcy, its trustee seeks to recover from original holders of this stock the unpaid balance. *Held*, that he may not recover. *Courtney* v. *Georger*, 228 Fed. 859 (C. C. A., 2d Circ.)

For discussion of this case, see NOTES, p. 854.

CORPORATIONS — STOCKHOLDER'S LIABILITY — GIFT OF STOCK TO CORPORATION. Many of the shareholders in a state bank donated a third of their shares to the bank, to sell and build up a surplus. The bank failed while much of this stock was unsold. The creditors seek to enforce the statutory double liability on the unsold stock against the donors. *Held*, that the donors are liable. *Barth* v. *Pock*, 155 Pac. 282 (Mont.)

In many American jurisdictions the purchase by a corporation of its own stock is *ultra vires*. See 4 THOMPSON, CORPORATIONS, 2 ed., §§ 4075, 4076. Such is the uniform rule in England. *Trevor* v. *Whitworth*, 12 A. C. 409. In such jurisdictions, collateral attack, even if denied for some purposes, will be permitted, in order to avoid prejudice to the innocent creditors. See E. H. Warren, "Executed *Ultra Vires* Transactions," 23 HARV. L. REV. 495, 509. However, if the stock has been resold by the corporation such protection of the creditor is unnecessary, as the depleted assets are then restored and the purchaser substituted to liability on the stock. *Lantry* v. *Wallace*, 182 U. S. 536; *Alling* v. *Wenzel*, 133 Ill. 264, 24 N. E. 551. Even if the purchase is not *ultra vires*, the courts should not permit such a purchase to injure the rights of creditors, and clearly would not as to existing creditors. *Clapp* v. *Peterson*, 104 Ill. 26. Some courts would refuse relief to subsequent creditors. *Marvin* v. *Anderson*, 111 Wis. 387, 87 N. W. 226. For such a purchase is really a reduction of the capital stock, on the apparent amount of which existing and subsequent creditors are alike entitled to rely. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., § 112. A gift of stock to a corporation, however, is different. If the stock is fully paid up, then no assets are destroyed, and there is no objection to acceptance by the corporation. *Rivanna Navigation Co.* v. *Dawson*, 3 Gratt. (Va.) 19; *cf. Lake Superior Iron Co.* v. *Drexel*, 90 N. Y. 87, 93. But when the stockholders are subject to a statutory double liability or the shares are only partly paid up, a gift or release destroys the creditors' security, and is a fraud on creditors as much as if assets were directly paid out. *Bellerby* v. *Rowland, etc. Co.*, [1902] 2 Ch. 14. Especially is this so as the creditor, though the other shareholders are still liable on their own stock, cannot hold them on the statutory liability for the stock, held by the corporation, See *Crawford* v. *Roney*, 126 Ga. 763, 766, 55 S. E. 499, 501; *cf. In re Republic Ins. Co.*, 3 Biss. (U. S. C. C.) 452. Accordingly the

attempt by a corporation to release unpaid stock assessments is subject to attack by creditors. *Vick* v. *La Rochelle*, 57 Miss. 602; *Rider* v. *Morrison*, 54 Md. 429; *cf.* 23 HARV. L. REV. 566. Hence the principal case seems correct in not releasing the shareholders, even though the transaction was intended for the benefit of the bank. *Cf. Walters* v. *Porter*, 3 Ga. App. 73, 59 S. E. 452; *In re Reciprocity Bank*, 22 N. Y. 9, 18.

DEEDS — CONDITIONS SUBSEQUENT — IMPOSSIBILITY OF PERFORMANCE. — A widow conveyed land to her son and his wife on their promise and on condition that they maintain and care for her during her life, the deed to be null and void if this condition was not complied with. On the death of one grantee and the incurable insanity of the other, the grantor sues for cancellation of the deed. *Held*, that the deed will be canceled. *Huffman* v. *Rickets*, 111 N. E. 322 (Ind. App.).

It was early laid down that an estate subject to a condition subsequent becomes absolute if the contingency for divesting becomes impossible without fault of the grantee. See CO. LIT. 206 *a*; *Cromwel's Case*, 2 Coke's Rep. 69, 79 *b*. However, the hostility of the courts to conditions subsequent has led them to expand this principle even to cases where the condition is not one for divesting, but a contingency on which the grantee may keep the estate. *In re Bird*, 8 Reports 326; *In re Greenwood*, [1903] 1 Ch. 749. See 6 KENT, COM. 130; KALES, CONDITIONAL AND FUTURE INTERESTS IN ILLINOIS, § 277. But in thus relieving an innocent grantee from a forfeiture which he was helpless to prevent, a court should not go beyond cases where the purpose of the condition has been substantially accomplished, as when a merely collateral desire of the grantor becomes impossible. *Cf. Lynch* v. *Melton*, 150 N. C. 595, 64 S. E. 497. With conditions of support there is no difficulty if the beneficiary dies, though in the lifetime of the testator, as the contingency of divesting cannot happen. *Parker* v. *Parker*, 123 Mass. 584; *Morse* v. *Hayden*, 82 Me. 227, 19 Atl. 443. But when the person to furnish support dies, the performance of the contingency on which the grantee may keep the estate becomes impossible, for the personal attention of the grantee is generally contemplated and therefore his successor cannot perform in his place. See *Glocke* v. *Glocke*, 113 Wis. 303, 312, 89 N. W. 118, 121; cf. *Richards* v. *Merrill*, 13 Pick. (Mass.) 405, 408. On the ground of this impossibility, the weight of authority would probably hold the condition excused. *Merrill* v. *Emery*, 10 Pick. (Mass.) 507; *cf. Anderson* v. *Gaines*, 156 Mo. 664, 57 S. W. 726; *Collett* v. *Collett*, 35 Beav. 312. And it is doubtful whether the maintenance would constitute a charge on the land. *Richards* v. *Merrill*, *supra*. See 3 POMEROY, EQUITY JURISPR. 1246 n. Other courts, looking at the hardship on the widow who would thus be deprived of both the support and the land, have rightfully refused to relieve against the forfeiture provided in the deed, and have restored the land to her. *Cromwel's Case*, *supra*. See *Cross* v. *Carson*, 8 Blackf. (Ind.) 138, 139. However, it is possible that where, as in the principal case, there is both a covenant and a condition, the deed will be construed as if containing a covenant only. See *Hoyt* v. *Kimball*, 49 N. H. 322, 326. *Contra*, *Glocke* v. *Glocke*, *supra*; *Cree* v. *Sherfy*, 138 Ind. 354, 37 N. E. 787. But even if so construed, it is disputed whether equity will grant rescission and restore the land. *Bruer* v. *Bruer*, 109 Minn. 260, 123 N. W. 813; *Bishop* v. *Aldrich*, 48 Wis. 619, 4 N. W. 775. *Contra*, *Stebbins* v. *Petty*, 209 Ill. 291, 70 N. E. 673; *Anderson* v. *Gaines*, *supra*.

ESTATES TAIL — UNUSUAL FORM OF ESTATE TAIL SPECIAL. — Land was devised to a man "and the heirs of his body (other than A., his eldest son)," with remainders over. *Held*, that the devisee took a valid estate tail special, from which A. was excluded. *Elliot* v. *Elliot*, [1916] 1 I. R. 30 (Ch. Div.).

The several kinds of estates tail enumerated in the Statute *De Donis* are not exhaustive, but only examples. See CO. LIT. 24 *a*; CRUISE'S DIGEST, v. 1, Tit.